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NO. 87-372

Supreme Court, U.S.
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In the Supreme Court of the United States

OCTOBER TERM, 1987

AMOCO PRODUCTION COMPANY
Petitioner

VERSUS

DONALD P. HODEL, SECRETARY,
DEPARTMENT OF THE INTERIOR, *ET AL.*
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

PETITIONER'S REPLY MEMORANDUM

Gene W. Lafitte*
J. Berry St. John, Jr.
George J. Domas
Anne E. Tate
LISKOW & LEWIS
One Shell Square - 50th Floor
New Orleans, Louisiana 70139-5001
Telephone: (504) 581-7979

Counsel for Petitioner

*Counsel of Record

A B Letter Service, Inc., 327 Chartres St., New Orleans, La. (504) 581-5555

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In their argument in opposition, respondents raise two "considerations," apart from the merits of the jurisdictional decision below, that they contend make review of this case in this Court inappropriate.

Respondents first contend that both the Fifth Circuit and the district court have lost all jurisdiction over this case because the case files have been transferred to the United States Claims Court and, as a consequence, there is no longer any jurisdictional issue for this Court to review. This imaginary limitation on the Court's powers is unfounded. The authorities cited by respondents merely hold that a circuit court lacks jurisdiction to hear a case that has been transferred properly out of that circuit. This principle certainly does not apply to the Supreme Court which has

both appellate jurisdiction and supervisory powers over both the transferor and the transferee courts in this case.

Respondents also ignore the provision of the Judicial Code that denies the Claims Court "jurisdiction of any claim . . . in respect to which the plaintiff . . . has pending in any other court any suit or process against the United States. . . ." 28 U.S.C. § 1500.[1] Thus, the granting of petitioner's application for writ of certiorari would defeat the jurisdiction of the United States Claims Court over this case. Upon this Court's review of the merits of this jurisdictional issue, the Court could then elect to remand the case to the Court of Appeals for the Fifth Circuit or to the United States Claims Court and could order the transfer of the case files as necessary.

The second preliminary "consideration," pertaining to the recent change in policy by the Interior Board of Land Appeals, raised by respondents was already addressed by petitioner in its petition (Pet. 19-21) and that discussion will not be repeated here.

On the merits of the jurisdictional issue, respondents claim that, because the decision below seemingly is one of first impression, this Court should not grant certiorari. Presumably, respondents believe that only a split of authority among the circuits constitutes a sufficient ground for this Court to grant certiorari. However, because jurisdictional questions concern the power and authority of a court to decide a controversy, they are, by their very nature, important. This Court has frequently recognized the importance of jurisdictional questions in the granting of writ applications. *E.g., United States v. Sherwood*, 312

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[1] As originally worded, this provision made clear that the pendency of a proceeding in the Supreme Court, on appeal from a decision of another court, would suspend Claims Court jurisdiction. 28 U.S.C. § 1500, Revision Note. The revision did not alter the intent of the statute, but merely omitted these words because they were deemed unnecessary. *Id.*

U.S. 584, 586 (1941); *United States v. Hohri, et al.*, ____U.S.____, 107 S.Ct. 2246, 2249(1987). Furthermore, to the extent that a conflict among the circuits might be necessary, such conflict exists concerning the exclusivity of the Tucker Act remedy. *See* discussion and cases cited at Pet. 11-13.

On the merits of the jurisdictional issue, respondents, although conceding that the OCSLA contains both a jurisdictional grant and a waiver of sovereign immunity, contend that this waiver does not include an action for "money damages." Respondents claim that the waiver contained in the OCSLA is merely for civil actions "to compel compliance with this subchapter." 43 U.S.C. § 1349 (a)(1). Opp. 15. Respondents' analysis is incorrect. First, Amoco's case is not a suit for money damages.[2] As the court below indicated, Amoco seeks

> (1) a declaratory judgment that the IBLA decision is void and ineffective because it is arbitrary, capricious, an abuse of discretion and is illegal and unconstitutional (fifth amendment violation); (2) a remand to the DOI for "proper calculation" of underpaid royalties and interest penalties for late payments; and (3) a permanent injunction against defendants from enforcing or applying the IBLA decision.

Pet. A-19. Although Amoco, if it is successful on the merits of its case, will ultimately recover a portion of the royalties and late payment penalties that were unlawfully extracted, its suit cannot in any way be characterized as a suit for money damages. Moreover, because both the lease and the

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[2] In a typical action for damages, a party seeks money indemnification for harm caused by the other party; that harm is quantified and a sum of money is computed which will compensate the party harmed. In this case, however, petitioner merely seeks the review of agency action by the IBLA (who speaks for the Secretary of the Interior) and ultimately the return of certain royalties that were unlawfully extracted.

OCSLA require the payment of royalty as a percentage "in amount or *value* of the production saved, removed, or sold" (43 U.S.C. § 1337(a)(1)(A))(emphasis added) and because Amoco contends that the Secretary has unlawfully valued the production for royalty purposes, [3] this suit, seeking review of that improper valuation, falls squarely within the waiver of sovereign immunity permitting civil actions against the United States "to compel compliance with this subchapter." 43 U.S.C. § 1349(a)(1).

Finally, even though respondents have filed a petition for writ of certiorari in a closely related case, *Bowen v. Massachusetts,* No. 87-712, involving the question of whether a case presenting both a claim for monetary relief and a request for prospective relief can be split into two lawsuits, respondents contend that such case should not influence the Court in granting petitioner's writ application in the existing case because, *inter alia,* this issue was not included in petitioner's questions presented. Opp. 17. Petitioner notes that Supreme Court Rule 21.1(a) states that the "[t]he statement of a question presented will be deemed to comprise every subsidiary question fairly included therein." Petitioner submits that the second question presented encompasses the issue concerning the splitting of claims between monetary relief and prospective relief. Pet. i.

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[3] The issue on the merits of this case is whether the Secretary of the Interior can value natural gas for royalty purposes at a value in excess of the maximum lawful price at which Amoco can legally sell the gas.

For the foregoing reasons and the more extensive reasons presented in its petition, Amoco respectfully requests that its Petition for Writ of Certiorari to the Fifth Circuit be granted.

Respectfully submitted,

Gene W. Lafitte*
J. Berry St. John, Jr.
George J. Domas
Anne E. Tate
LISKOW & LEWIS
One Shell Square - 50th Floor
New Orleans, Louisiana 70139-5001
Telephone: (504) 581-7979

Counsel for Petitioner

*Counsel of Record

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the above and foregoing Petitioner's Reply Memorandum has been served on all parties by placing copies in the United States mail, properly addressed and postage prepaid to the Solicitor General, Department of Justice, Washington, D. C., 20530, and the Solicitor, Department of Interior, C Street (between 18th & 19th Streets) N.W., Washington, D.C., 20240, on the 17th day of November, 1987.

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Gene W. Lafitte